

# **EXHIBIT F**

AMERICAN ARBITRATION ASSOCIATION

STATE OF NEW YORK,	)	
	)	
Claimant,	)	
	)	
v.	)	Case No. 01-17-0005-3636
	)	
SENECA NATION OF INDIANS,	)	
	)	
Respondent.	)	

SWORN WITNESS STATEMENT OF PRESIDENT TODD GATES

STATE OF Colorado )  
 )  
COUNTY OF Denver ) ss.

Todd Gates, being duly sworn, deposes and says:

1. I am the President of the Seneca Nation of Indians (the "Nation"). I was elected in November 2016 and my term expires in November 2018. Pursuant to the Seneca Nation Constitution, I am not eligible to run for re-election for a successive term.

2. Prior to my term as President, I served as the Treasurer of the Nation from November 2014 to November 2016. I have also served two terms on the Seneca Nation Council from 2004 to 2012 and as the President/CEO of Seneca Construction Management Corporation from 2012 to 2014.

3. I make this Sworn Witness Statement based on my personal knowledge and experience.

4. This Sworn Witness Statement is submitted in opposition to the papers submitted by the State of New York, and in support of the Statement of Defense of the Nation.

**THE STATE'S INCORRECT ALLEGATIONS ABOUT THE  
NEGOTIATION HISTORY BETWEEN THE PARTIES**

5. In paragraph 31 of the State's Statement of Claim, the State maintains as follows:

Despite the Nation's purported interest in meeting with the State to resolve this dispute, *the Nation rebuffed all meaningful attempts made by the State to engage in negotiations, resulting in the commencement of this arbitration.*

6. As outlined in detail in paragraph 25 of the Nation's Answer, this statement is inaccurate. To the contrary, I and senior members of my staff have repeatedly expressed my willingness to meet with the Governor in good faith to allow the Governor a fair opportunity to explain or support the State's position with respect to this dispute.

7. After the Nation made its final exclusivity payment to the State, the State thereafter made clear its view that the Compact required the Nation to continue to make payments for the full 21-year period of the Compact, though to my knowledge the State never identified any Compact text supporting its view. The Nation advised the State that the text of the Compact clearly identifies a definite payment schedule, that the Nation has fulfilled that schedule, and that it therefore owes no further payments. These communications were undertaken in part through State and Nation staff and in part through the press.

8. I was personally involved in the Nation's efforts to meet with the State to resolve this dispute.

9. These efforts are set forth in the documentary record as follows.

10. On March 31, 2017, I sent a letter to Governor Cuomo, which stated in part as follows:

It was a pleasure to speak with you by telephone last week. . . . As we discussed, in keeping with the terms of the Nation-State Gaming Compact, the Nation sent its final revenue-sharing payment to the State (on revenues earned during the final quarter of 2016). This payment completes the 14-year payment schedule detailed in Paragraph 12 of the Compact.

During our conversation, you expressed an interest and a willingness to meet and discuss matters related to the Compact. I discussed this matter with the members of our Nation Council, as I said I would, and there is a willingness on the part of the Seneca Nation to meet with you. . . . [A]s President, I look forward to the opportunity for additional direct dialogue with you.

Attached to this Statement as **Exhibit RX-1**.

11. On April 18, 2017, my Chief of Staff, Victor Redeye, wrote to Alfonso David (counsel to the Governor) as follows:

President Gates confirms the Nation's willingness to meet with the Governor . . . . I will be happy to work with you to schedule an appropriate time and date for the two leaders to meet. President Gates prefers to meet in Western New York, as he discussed with the Governor.

Attached to this Statement as **Exhibit RX-2**.

12. On June 30, 2017, I wrote to Governor Cuomo as follows:

I believe it is important for us to have an open line of communication. Several months ago, I accepted your request to meet to discuss issues related to the Compact. Unfortunately, we have not yet received any potential meeting dates from your staff. I hope we can soon set a date and time to meet, if you still desire.

Attached to this Statement as **Exhibit RX-3**.

13. On June 30, 2017, Christina Jimerson, Special Assistant to my office, wrote to Jamie Reuben (Officer of Secretary to the Governor) as follows:

At the request of the Governor, President Gates agreed to meet with him in Western New York on Seneca territory at a mutually agreeable time to discuss the Governor's concerns regarding the [Compact] matter. The Nation has been waiting for the Governor's office to provide us some dates during which he is able to travel to Western New York for such a meeting. Thus far, no dates have been proposed by the Governor.

. . . As you will recall, my last correspondence to you via email at the end of May was that the President remains open and available for a meeting and I would wait to hear back from you, pending your discussion with the Governor. As of today, I continue to wait for a response from you.

. . . The Nation has been completely forthright and willing to speak to Governor Cuomo to discuss any concerns he may have regarding the Compact. President Gates remains willing to meet with Governor Cuomo, and we continue to wait for

the provision of some dates during which the Governor can travel to Seneca territory for such a meeting.

I look forward to receiving some clarity as to how the Governor would like to proceed in this matter.

Attached to this Statement as **Exhibit RX-4**.

14. Despite my evident and repeatedly expressed willingness to meet with the Governor in good faith during this period of time, the Governor and his staff did not respond to these meeting requests. Instead, the Governor traveled to Niagara Falls on July 6, 2017 and publicly impugned the Nation's integrity, even accusing the Nation of having "a history of signing agreements and then later having non-compliance issues and I hope they don't repeat that."<sup>1</sup> Considering the State's history of breaking treaties and other solemn agreements with the Nation, all well documented in court cases and the history books, the Governor's choice to attack the integrity of the Nation was particularly egregious, and was insulting to me both personally and as the leader of the Nation and its people. The Nation nevertheless continued its good faith willingness to meet with the State.

15. On July 24, 2017, Michele Mitchell, Deputy Counsel for the Nation, wrote to Alphonso David as follows:

As Nation representatives have continuously said, the Seneca Nation leadership remains open and willing to meet with Governor Cuomo regarding any issues related to the Compact. . . . In contrast with communications to the President of the Nation that direct dialogue would take place, the Governor has instead, on several occasions now, taken opportunities to attack the integrity of the Seneca Nation and its people in the Western New York press. Despite this, the Seneca Nation President remains willing to sit down with the Governor in an attempt to resolve our differences prior to resorting to costly, lengthy and adversarial arbitration proceedings.

Attached to this Statement as **Exhibit RX-5**.

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<sup>1</sup> *Cuomo: Tribal compact "binding,"* Niagara Gazette, July 6, 2017. Available at [http://www.niagara-gazette.com/news/local\\_news/cuomo-tribal-compact-binding/article\\_9eba6a35-c768-5a6e-8e16-c134821c5498.html](http://www.niagara-gazette.com/news/local_news/cuomo-tribal-compact-binding/article_9eba6a35-c768-5a6e-8e16-c134821c5498.html) (last visited Oct. 22, 2017).

16. The Governor then finally agreed, in late July, on a time and place to meet with me. However, he proceeded to cancel the scheduled meeting.<sup>2</sup>

17. In August of 2017, the Governor again agreed to meet with me. The Governor's office approved the location, the time, and precise security details. The Nation's staff expended a full day preparing for the Governor's visit, coordinating with his staff, conducting a security sweep with the state police, and arranging for other details to ensure a meaningful and safe meeting between the two leaders. Nevertheless, the Governor again cancelled the meeting, and did so "just a day before [we] were to meet."<sup>3</sup>

18. Rather than meet with me to explain the basis for the State's position, the Governor has instead chosen to issue threats in the press suggesting that he will destroy the viability of the Nation's gaming operations should the Nation not bend to the State's will. As the Buffalo News reported:

A Cuomo official . . . told the Buffalo News the state will explore locating a casino in Niagara Falls if the Senecas don't resume revenue sharing payments[.]

"I have no doubt that we would get companies from around the world to bid on casino rights in the Buffalo/Niagara area. I have no doubt," Cuomo said.<sup>4</sup>

19. Given the clear chain of communication described above, the State's continued assertion that "the Nation rebuffed all meaningful attempts made by the State to engage in negotiations, resulting in the commencement of this arbitration" (Statement of Claim ¶ 31) is simply untrue. I do not understand why the State persists in making these kinds of claims.

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<sup>2</sup> *Cuomo Cancels Casino Meeting With Senecas*, Spectrum News, August 1, 2017. Available at <http://www.nystateofpolitics.com/2017/08/cuomo-cancels-casino-meeting-with-senecas/> (last visited Oct. 22, 2017).

<sup>3</sup> Tom Precious, *Is there a way to stop war of words between Cuomo and Seneca president?*, The Buffalo News, Aug. 25, 2017. Available at <http://buffalonews.com/2017/08/25/outside-arbitrators-horizon-new-york-seneca-dispute/> (last visited Oct. 9, 2018).

<sup>4</sup> Tom Precious, *Cuomo threatens new casino in Niagara Falls; Senecas call it 'foolish,'* The Buffalo News, Aug. 22, 2017. Available at <http://buffalonews.com/2017/08/22/cuomo-seneca-nation-breach-casino-compact/> (last visited Oct. 9, 2018).

**THE STATE'S INCORRECT ALLEGATIONS ABOUT THE NATION'S IMPACT ON  
LOCAL COMMUNITIES**

20. The State also criticizes the Nation for causing “serious harm to local communities in Western New York” (Statement of Claim ¶ 29). In fact, after fulfilling its obligation to make revenue sharing payments for a full 14 years, the Nation repeatedly reached out to local governments in the counties where the three casinos are located to discuss alternative revenue sharing arrangements.

21. On March 22, 2017, just before the last revenue sharing payment was due, I called the Mayors of the Cities of Salamanca, Buffalo, and Niagara Falls (collectively the “Cities”) to notify them that the Nation’s last payment would be that month. In follow-up letters dated March 24, 2017, I confirmed the information from these calls and requested an opportunity to meet with each of them to discuss the future of the relationship between the Nation and the Cities:

Given that the [] Casino is [adjacent to/located near] the City [] and utilizes certain government services from the City, we would like to sit down with you in the near future to discuss how best to continue the productive relationship we have enjoyed over the duration of the Compact to date. My staff will be reaching out to your office next week to coordinate a time for us to meet in the near future so that we can begin this dialogue.

We appreciate the friendship and partnership of the City and look forward to continuing to work with you.

Attached to this Statement as **Exhibit RX-6**.

22. On June 30, 2017, I again sent letters to the Cities’ respective mayors. Attached to this Statement as **Exhibit RX-7**. I emphasized the Nation’s commitment to continuing our contributions to the financial health and stability of the region in partnership with them:

I want to assure you that, although our obligation to pay the State a revenue share has ended, this will not diminish the Nation’s commitment to the economic wellbeing of the region. Our desire to continue our dialogue with your government to identify and pursue additional opportunities for economic development and job creation in Western New York remains strong.

23. My June 30, 2017 letters also emphasized that the Compact required the State to compensate local governments on an unending basis untied to the Nation's 14-year revenue sharing obligation:

[Some] recent local press reports have unfortunately suggested that because the Nation's revenue share obligation with the State has concluded, the State may discontinue its payments to the local governments. We do not understand the basis of this suggestion. Under the plain terms of Section 11(d), the State's obligation to compensate the local governments should not change:

- (a) The Parties agree that host municipalities should be compensated to be able to adjust to the economic development expected to result from the Gaming Facilities authorized under this Compact. Consistent with this goal, the State shall reach financial agreements with the host municipal governments, and any payments made pursuant to such agreements shall be made by the State.

24. Mayor Brown of Buffalo and Mayor Dyster of Niagara Falls both ignored the Nation's efforts to open a dialogue. Mayor Dyster went further, openly criticizing the Nation and stating that the City lacked interest in cooperating with the Nation even after the State has ceased making payments to the Cities as required by the Compact.<sup>5</sup> The Nation nevertheless remains open and committed to further dialogue with these neighboring governments.

25. The Nation has had some dialogue with the City of Salamanca concerning future partnerships, but no formal agreements have been reached.

#### **THE NATION'S CONTRIBUTIONS TO LOCAL ECONOMIES**

26. Despite the State's efforts to portray the Nation casinos as providing a net drain on the State and local governments and communities, the reverse is in fact true. The Nation has invested in excess of \$1.2 billion in its three casino properties and is one of the largest employers

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<sup>5</sup> Philip Gambini, *Seneca leader blasts Dyster for casino cash remarks*, Niagara Gazette, Sept. 12, 2018. Available at [https://www.niagara-gazette.com/news/local\\_news/seneca-leader-blasts-dyster-for-casino-cash-remarks/article\\_81db3de9-3bf9-585d-bcb6-89d85c98ab55.html](https://www.niagara-gazette.com/news/local_news/seneca-leader-blasts-dyster-for-casino-cash-remarks/article_81db3de9-3bf9-585d-bcb6-89d85c98ab55.html) (last visited Oct. 22, 2018).



in Western New York, currently employing approximately 3,700 individuals in its gaming operations. The annual salaries and wages of the Seneca Gaming Corporation (“SGC”) total approximately \$127 million, payroll taxes total approximately \$11 million, and other benefits total approximately \$24 million. Over 2,000 of these employees are covered under SGC’s health insurance plans, including 827 families. The State and local governments receive benefits from the wages paid to these individuals, and to the various contractors and suppliers for the casinos. Annual purchases from vendors in the State approximate \$75 - \$80 million per year. The casinos generate approximately 7.8 million visits per year from approximately 1.8 million unique visitors, also providing a benefit to the local economies. The employees, vendors, suppliers and visitors all contribute to the economic development that the casinos have brought to the areas in which they are located. Even absent revenue sharing, the State and local governments and communities will continue to benefit from the presence of the Nation’s gaming operations in their midst.

27. SGC is a wholly owned subsidiary of the Nation. Each year, its profits are paid to the Seneca Nation pursuant to its leases with the gaming corporations for the casino facilities. This revenue, in turn, is used to support the Nation government, which includes a variety of programs to assist its members, including two community centers, an extensive jobs program, two health clinics, housing assistance, and a variety of other programs that have substantially improved the quality of life for the Seneca Nation members. The benefits of the revenue are more robustly described on the Nation’s website, which can be accessed at [www.sni.org](http://www.sni.org).




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President Todd Gates

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of October, 2018

Amber R. Bustos  
Notary Public

